

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHIGAN FIRST CREDIT UNION,

Plaintiff,

vs.

Case No. 05-CV-74423
HON. GEORGE CARAM STEEH

CUMIS INSURANCE SOCIETY, INC.,
a foreign, corporation,

Defendant.

ORDER DENYING AS ON RECONSIDERATION OF THE COURT'S
JANUARY 5, 2009 ORDER (# 283)
INTERVENOR PLAINTIFF OFIS' BRIEF (#275) IN SUPPORT OF
MFCU'S MOTION IN LIMINE NO. 4 TO EXCLUDE OFIS REPORTS

Intervenor plaintiff Office of Financial and Insurance Regulation (OFIS) filed a brief on Friday, January 2, 2009, in support of MFCU's December 22, 2008 motion in limine No. 4 to exclude OFIS Reports and MFCU Replies as inadmissible. The court was administratively closed on January 2, 2009. On the morning of Monday, January 5, 2009, the court issued its Order granting CUMIS motion in limine No. 27 to admit the OFIS Reports and MFCU Replies, and denying MFCU's motion in limine to exclude the OFIS Reports and MFCU Replies (#283). Counsel for OFIS appeared at the subsequent January 5, 2009 pre-trial hearing and notified the court that OFIS had filed the January 2, 2009 brief. Counsel for OFIS invoked In re Banker's Trust Co., 61 F.3d 465 (6th Cir. 1995) to support its argument that the OFIS Report are privileged and therefore inadmissible.

On March 14, 2007, this court issued an order ruling that the federal common law bank examination privilege recognized in In re Banker's Trust is inapplicable in this diversity action where the issue of privilege is governed by state law. See Order, March 14, 2007,

at 3, 7. The court also rejected OFIS' arguments concerning a deliberative process privilege. Id. at 9. OFIS reiterates these same arguments in its January 2, 2009 brief. For the same reasons given in the court's March 14, 2007 Order, OFIS's renewal of these arguments is without merit. Reviewing OFIS's brief as on reconsideration of the January 5, 2009, Order granting CUMIS motion to admit the OFIS Reports and MFCU Replies, and denying MFCU's motion in limine to exclude the OFIS Reports and MFCU Replies, the court did not err. See E.D. Mich. LR 7.1(g)(3). Accordingly,

OFIS's January 2, 2009 brief (#275) is hereby DENIED as on reconsideration of the court's January 5, 2009 Order (#283) granting CUMIS' motion in limine No. 27 and denying MFCU's motion in limine No. 4.

SO ORDERED.

Dated: January 6, 2009

s/George Caram Steeh

GEORGE CARAM STEEH

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on January 6, 2009, by electronic and/or ordinary mail.

s/Josephine Chaffee

Deputy Clerk